



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 09 2013** Office: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, a university, seeks to employ the beneficiary as an Assistant Professor of Architecture. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel states:

The decision fails to consider the extensive and credible evidence of record that demonstrates that [the beneficiary] – based on her well-documented record of acclaim to date as an architect and university-level educator with a focus in sustainable architecture and urbanism – will benefit the National Interest to a significantly higher degree than a U.S. worker with the minimum qualifications for the position of Assistant Professor of Architecture.

The petitioner submits a brief with additional evidence. For the reasons discussed below, the AAO will uphold the director's decision.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the beneficiary qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (NYSDOT), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, "exceptional ability" is not, by itself, sufficient cause for a national interest waiver. *Id.* at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.*; see also *id.* at 222. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that

alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise.

The AAO concurs with the director's determination that the beneficiary's work is in an area of intrinsic merit and finds that the proposed benefits of her work, advancements and research in the fields of sustainable architecture and urban design, would be national in scope. It remains, then, to determine whether the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, the AAO generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this beneficiary's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement for the beneficiary with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the beneficiary's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Along with information about [REDACTED] documentation pertaining to the beneficiary's educational and professional qualifications, her design contest awards for unbuilt structures, and general information demonstrating the importance of the fields of sustainable architecture and urban design, the petitioner submitted more than fifty letters of support discussing the beneficiary's work and occupational qualifications. The AAO will not quote from every letter, because some of them contain redundant claims already addressed in other letters. Instead, the AAO will discuss selected examples to illustrate the nature of the references' claims.

[REDACTED] states:

As an Assistant Professor of Architecture at [REDACTED] [the beneficiary] is responsible for preparing and teaching a wide variety of core and elective courses within [REDACTED] Department of Architecture, including sustainable architecture, urbanism, South Asian art, and related fields. Her duties also include responsibility for serving as an advisor to students for specific architecture and design projects; representing the university in various academic and professional fora; and serving as a member of the Curriculum Committee, where she is active helping expand the curriculum

to include new classes and opportunities in sustainable architecture, urban design, and related areas, as well as establishing a graduate degree program for the department.

* * *

[The beneficiary] has continued to excel since commencing employment at [REDACTED] last year. As noted above, her [REDACTED] project recently won 1st Prize at the [REDACTED] competition. Further, the student group she directly advises recently won 1st Prize at the prestigious [REDACTED] Competition and another of her student teams won the championship last summer at the [REDACTED] competition for its [REDACTED] of [REDACTED]

As noted above, [the beneficiary] is not only actively engaged with the above-referenced teaching and design responsibilities, but she also serves as a member of the Department's Curriculum Committee, through which she helps recommend and introduce new sustainable architecture courses, projects, and other opportunities, including efforts to build [REDACTED] graduate program in Architecture and Design. Her ongoing teaching, research, administrative, and design duties clearly address key areas of importance in the field of Sustainable Architecture, Urbanism, and Planning including her research in the areas of Smart Growth/Intelligent City, Transit Oriented Development, and the impact of Cellular Urbanism in Megacities.

With regard to the beneficiary's teaching duties and service on the Department of Architecture's curriculum committee developing new courses, [REDACTED] comments do not establish that the benefits of the beneficiary's work would extend beyond [REDACTED] such that they might have a national impact. *Id.* at 217, n.3. provides examples of employment where the benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. In the present matter, the benefits of the beneficiary's teaching and curriculum development duties would be primarily limited to students at [REDACTED] and, therefore, so attenuated at the national level as to be negligible. [REDACTED] fails to provide specific examples of how the beneficiary's work at [REDACTED] as a teacher, curriculum developer, or researcher in the fields of Sustainable Architecture, Urbanism, and Planning has influenced the field as a whole. Moreover, there is no evidence showing that the awards received by the beneficiary and her

students for various unbuilt structures demonstrate her influence on the field at a national level. Instead, the awards for unbuilt structures recognize her abilities as a designer and instructor. By statute, "exceptional ability" is not, by itself, sufficient cause for a national interest waiver. *Id.* at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.*; *see also id.* at 222. For example, there is no documentary evidence showing that the beneficiary's [REDACTED] project is under construction or that any standing structures for which the beneficiary was the lead designer have influenced the work of practicing architects in the field.

[REDACTED] states:

[The beneficiary] is a LEED accredited professional who has worked as an *intern architect* for more than 6 years. In addition to practice she has been serving as a professor of architecture at [REDACTED] where she teaches students about the benefits of sustainable practices and implementation strategies for greening the built environment.

As part of her teaching [the beneficiary] directs design studios where she uses the LEED (Leadership in Energy and Environmental Design) Green Building Certification program developed by the U.S. Green Building Council (USGBC), an internationally recognized system, as a teaching tool integrating LEED principles into class assignments thus allowing students to acquire the necessary knowledge and skills they will need in practice. . . . For students who will remain in the [REDACTED] metro area to work it will be critical that they understand implementation of the LEED rating system. In addition to her studio work [the beneficiary] also introduced a unique independent study course titled "Sustainable Architecture and Urbanism" in the fall of 2010. To enhance the course curriculum she took full advantage of the educational resources offered by the USGBC such as podcasts and publications. Again LEED principles were integrated into the course teachings and students used a case study method to understand the concepts in practice. This experience allowed many students to pursue the LEED professional credentials. [The beneficiary] also advised many thesis projects which studied and incorporated LEED.

[The beneficiary] is an *emerging professional* who has won the [REDACTED].

Her project [REDACTED] offered laudable sustainable solutions to one of the first garden cities of the United States. The Greenbelt community unanimously recognized the project for its merits, appropriateness, conservation of style and received applause in a post-competition community gathering which included both the general public and building professionals.

* * *

Building on her experience, in 2011 [the beneficiary] directed a team of architecture students from [REDACTED] to compete in the competition. USGBC and the

Salvation Army hosted the competition which challenged student and professional teams to propose a concept for a sustainable and affordable home to be built in the Broadmoor neighborhood of New Orleans. With [the beneficiary's] leadership and guidance her students created an innovative design that met the budget and fit within the neighborhood vernacular. The [redacted] project was exhibited at the 2010 Greenbuild International Conference & Expo hosted by the USGBC.

[Emphasis added.]

[redacted] describes the beneficiary as "an intern architect" and "an emerging professional" who has received three [redacted] awards in the [redacted] but there is no documentary evidence showing that the beneficiary's work has had a significant national impact or has otherwise influenced the field as a whole. The AAO cannot ignore [redacted] statement that the beneficiary "has worked as an *intern architect* for more than 6 years." [Emphasis added.] According to the beneficiary's Form ETA-750B, Statement of Qualifications of Alien, she worked as an "Architect Intern" for both [redacted] (July 2008 – June 2009) and [redacted] (January 2006 – July 2008) prior to her faculty appointments at the [redacted] and [redacted]

While the record reflects that the beneficiary successfully completed an accredited degree in architecture and interned under the supervision of licensed architects, there is no documentary evidence demonstrating her subsequent licensure as an architect in the United States. Moreover, regardless of the beneficiary's LEED accreditation or years of work experience as an "intern" architect, special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. With regard to the beneficiary's [redacted] project and her students' [redacted] project, there is no evidence showing that the proposed projects were constructed or that her work has notably influenced the sustainable architecture field.

[redacted] states:

[The beneficiary] was one of the first people I meet when I joined [redacted] [redacted] Immediately she impressed me with her passion for architecture, urban design and sustainability. Her goals have always been to expand her growth in the profession in the United States. She worked on a variety of projects while at [redacted] [redacted] and has proved herself to be a skilled and competent worker to any

¹ The National Council of Architectural Registration Boards states: "Architects are licensed professionals trained in the art and science of the design and construction of buildings and structures that primarily provide shelter. . . . Architects must be licensed before they can practice as an architect or call themselves an architect. There are three main steps in becoming an architect: education, internship, and examination. . . . All states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands require individuals to be licensed (registered) before they may call themselves architects or contract to provide architectural services." See <http://www.ncarb.org/Becoming-an-Architect.aspx>, accessed on December 26, 2012, copy incorporated into the record of proceeding.

task assigned to her. She has participated on project juries for college students and currently has a teaching position at [REDACTED] where she serves as adjunct faculty and student advisor.

* * *

She plans to take her Architectural Registration Exams as well as the American Institute of Certified Planners Exam. By passing these exams she will earn professional credentials recognized universally as a symbol of her commitment to the profession, communities and excellence in design.

[The beneficiary] . . . constantly pursues side projects and completions that explore design solutions that will assist poor, disadvantaged persons and neighborhoods that have had been destroyed by natural disasters. These efforts include designs competitions and student projects for Haiti and Japan. Her portfolio of work represents that she is always thinking of design, urbanism and sustainability nationally and globally. Her various work experiences abroad and in the United States are reflected in her designs. She has received awards, done lectures and written on various topics. I have no doubts that she will continue this pattern for the remainder of her career and she will make an impact on her future students and the profession.

Regarding the beneficiary's work under the supervision of a licensed architect at [REDACTED] fails to provide specific examples of how the beneficiary's projects for various clients have notably influenced the field as a whole. [REDACTED] asserts that the beneficiary plans to take the exams necessary to practice as an architect and that the beneficiary "will make an impact on her future students and the profession." Speculation about the possible future impact of the beneficiary's work is conjecture, not evidence, and cannot establish eligibility for the national interest waiver as of the petition's September 8, 2011 filing date. Eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

[REDACTED] states that she met the beneficiary during their graduate studies at the [REDACTED] further states:

Following our time together at [REDACTED] [the beneficiary] and I remained in close contact and it was after I was hired by [REDACTED] architects that I recommended her for a position in their [REDACTED]. It was her own professional experience that got her the job amongst several qualified candidates. While at [REDACTED] she was an integral member of the urban design team working with [REDACTED].

who remains a friend and colleague of hers and mine today. One of [the beneficiary's] most significant recent achievements was leading a winning team in the [REDACTED]

[REDACTED] Her team won with an entry that addressed housing solutions for New Orleans following Hurricane Katrina – the modular housing prototype was based on the vernacular language of “Shotgun” houses typical of the region, but it made use of re-cycled shipping containers as the base for the building. Considering the importance of global environmental issues and the Executive Orders issued by the Obama Administration regarding Energy and Sustainability, [the beneficiary's] work is of national importance and already encapsulates much of this forward thinking. She is contributing to the growing knowledge base in our young professionals by teaching and encouraging young people in the same manner.

In addition, the Architecture profession has a need to diversify with more international and female leaders in this professional community. Female architects as well as professionals from different ethnicities remain to be a minority in the field of architecture and there needs to be a more equal balance in the field. To that end, [the beneficiary] is a major player as female architect and a forerunner in her field. She is a role model for the future generation of female architects especially with her presence at [REDACTED]. She adds value to her teaching by offering an international perspective to the students and architecture community as a whole. Her prominence at a minority institution, like [REDACTED] is supreme and she will continue to be asset there to the university community.

[REDACTED] states that she worked with the beneficiary at [REDACTED] but she fails to provide specific examples of how the beneficiary's projects for the firm have notably influenced the field at large. [REDACTED] also comments on the beneficiary's students' [REDACTED] project winning the regional phase of the [REDACTED] but there is no documentary evidence showing that they ultimately won the national competition or that their specific home design was utilized in the New Orleans Broadmoor neighborhood. Moreover, the petitioner has not shown that the beneficiary's student's [REDACTED] project design has been utilized throughout the United States or has otherwise influenced the sustainable architecture field as a whole. In addition, [REDACTED] comments on the national importance of the beneficiary's sustainable architecture work. Assertions regarding the overall importance of the alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYS DOT*, 22 I&N Dec. at 220. As previously discussed, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. USCIS does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. [REDACTED] also states that “the Architecture profession has a need to diversify with more international and female leaders.” The fact that the beneficiary is female and happens to originate from a foreign country and, thus, can offer an “international perspective” or serve as a role model for prospective female architects is not evidence that she has made or will make an impact on the field of architecture other than to benefit her specific students, which, while having intrinsic merit, is not national in scope. If USCIS were to accept that the beneficiary's cultural experiences and gender warrant approval of the waiver, USCIS would need to approve the

waiver for every female alien with a degree in a profession that provides educational services to the public. The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for female professional educators. It is the position of USCIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217.

states:

[The beneficiary] provided outstanding volunteer service to the [redacted]. She developed an innovative curriculum on urban design and sustainability for children in a summer program at [redacted] an underserved school located in [redacted]. The curriculum of the program was meant to help the students learn about their neighborhood and living spaces.

* * *

[The beneficiary] was the [redacted] team leader for the Canstruction project in 2007. Canstruction is a creative competition where teams of architects design and build large structures made entirely with canned goods. Canstruction benefits the [redacted] and its distribution of food to emergency feeding programs in [redacted]. [The beneficiary's] volunteer contributions elevate the architecture profession.

[The beneficiary] has a strong academic background and has successfully earned her LEED certification, which is now a leading green path in the architectural profession. Now as a faculty member of [redacted] [the beneficiary's] teaching greatly benefits the students. It exposes them not only to distinctly architecture education, but gives them an international and sustainable edge. Her ability as a female architect and instructor in the current sustainable architecture movement helps to diversify the field to include an amalgam of ethnicities, and increases the number of female practitioners in the STEM (Science Technology, Education and Math) fields.

[The beneficiary] is a great institutional asset for the U.S. education sector as schools seek to train the future leaders starting from children in K-12 to higher education at the University level. [redacted] needs to set the example of diversity of the architecture profession. Many of [the beneficiary's] students participated in [redacted] and one of her students actually received the first prize from [redacted]. Her students, encouraged by her, also participated in other events and competitions organized by [redacted]. Her presence certainly fosters and advances architecture education in [redacted] and to the U.S. educational system holistically.

[redacted] discusses the beneficiary's work with students and service projects in [redacted] but there is no documentary evidence to support [redacted] claim that the beneficiary has advanced "the U.S. education system holistically." USCIS need not accept primarily conclusory assertions.

1756, Inc. v. The Attorney General of the United States, 745 F. Supp. 9, 15 (D.C. Dist. 1990). In the same manner as [REDACTED] also comments on the beneficiary's "ability as a female architect and instructor in the current sustainable architecture movement" as helping to diversify the field. While gender diversity among architects and university instructors certainly has intrinsic merit, [REDACTED] fails to provide specific examples of the national impact of the beneficiary's original work or specific instances where the beneficiary's projects that have otherwise influenced the field as a whole. As previously discussed, the petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all female architects or all female university instructors providing their services to the public.

[REDACTED] states:

My current project at the [REDACTED] is Intelligent Cities, a multi-faceted exploration of the intersection of information and communication technologies with urban design and planning. It is in the context of this project that I have had the opportunity to review [the beneficiary's] related research. Her research on how mobile communications are affecting urban design is in the forefront of current design research. Her design work, teaching, and research together demonstrate a serious commitment to the pressing issues facing our cities and buildings.

As an educator, [the beneficiary] reaches two audiences, pre-professional university students and teens. There is a critical need for STEM teachers in U.S. schools, particularly in the inner city. [The beneficiary] is bringing her skills as an educator and, equally important, her background as an architect, to an underserved population. She has chosen to establish herself as an architect/educator in [REDACTED] and be an active part, and a role model, in the reforming of secondary education. Her position at [REDACTED] the prominent [REDACTED] gives her a unique position to raise student expectations for higher education.

[REDACTED] comments briefly on the beneficiary's research regarding how mobile communications affect urban design, but there is no documentary evidence indicating that the beneficiary's research findings are frequently cited by other scholars in their published work or that the beneficiary's research has otherwise notably influenced the field as a whole. [REDACTED] also comments about the importance of having educators with the beneficiary's skills in underserved areas, but she does not provide specific examples of how the beneficiary's work has impacted the field at large at the time of filing. Assertions regarding the overall importance of the alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 220. As previously discussed, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. USCIS does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218.

[REDACTED] states:

I have known [the beneficiary] since her graduation from the [REDACTED] through her work, through collaboration, and through frequent meetings.

* * *

Along with my team, [the beneficiary] worked on a research project with me - [REDACTED] - a sustainable initiative work at [REDACTED]. The research is an exploratory and suggestive project that examines the transformation of [REDACTED] into a completely self-sustainable environment. It is a proposition for the long-term transformation of [REDACTED] and [the beneficiary] worked on the aspect of water, its sources, uses and future. I found her contribution to be extremely insightful and helpful.

[REDACTED] comments on the beneficiary's work for his [REDACTED] research project, but there is no evidence showing that their work is frequently cited by independent architectural scholars or has otherwise notably influenced the field at large.

[REDACTED] states:

[The beneficiary's] own work on sustainable architecture and urban design includes conducting research for the firm of [REDACTED] and at the [REDACTED] where she worked on transit- and transportation-related urban design projects. She was part of another prestigious urban design firm, [REDACTED] where she worked on large-scale urban projects in [REDACTED] and [REDACTED]. She has also worked on the relationship between technology and cities, and was invited to present her research on cell phone networks and their impact on urban design at the world-renown [REDACTED]. She was part of the Intelligent City Forum at the [REDACTED]. Her research paper, [REDACTED] Embodiment of Cellular Technology, Informal Sector & Transformation in Urban Spaces, was accepted and presented at an international conference in [REDACTED].

[REDACTED] comments on the beneficiary's work on transit- and transportation-related urban design projects in [REDACTED] and on large-scale urban projects in [REDACTED] and [REDACTED] but there is no documentary evidence showing that her work has significantly impacted the field at large. Further, there is no evidence demonstrating that her research on cell phone networks and their impact on urban design is frequently cited by independent scholars or has otherwise notably influenced the field as a whole.

[REDACTED] states:

I have worked in team with [the beneficiary] at [REDACTED] in various projects in 2006/8. While working with her, I have found her exceptionally adept in design capabilities in coming up with unique design solutions. She is extremely

knowledgeable on sustainable techniques and came up with unique solutions in regards to transit oriented developments. In particular to [REDACTED] her design suggestions and moves were integrated to transit, that is [REDACTED] and the built form where it accommodated public spaces. While the project itself targeted towards LEED Platinum certification, the development holistically worked as a catalyst to revive the [REDACTED] neighborhood. The project acted as an extension of the long-term [REDACTED] and [REDACTED] master plan project. [The beneficiary's] thoughts and suggests [sic] were unique and added much to the design team.

[REDACTED] discusses the beneficiary's design capabilities and knowledge of sustainable techniques, but it cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *Id.* at 221. Moreover, the AAO notes that the beneficiary's role on the preceding projects was that of an "intern" architect. There is no documentary evidence showing that the beneficiary's specific work for [REDACTED] had a significant national impact or otherwise influenced the field as a whole.

On January 27, 2012, the director issued a request for evidence. The director instructed the petitioner to submit further evidence to "establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted additional information about the beneficiary's work, her professional portfolio, her design and architectural teaching material from [REDACTED] and additional letters of support discussing the beneficiary's activities in the field and awards for unbuilt structures that she and her students have received.

[REDACTED] states:

[The beneficiary's] professional and teaching experience in the field and her emerging research in the context of the mega-city will enhance our program offerings in studying the built environment. In addition, her research in support of her teaching focus on one of the most significant issues shaping public life in today's built environment, that of technology and its effect on the city from the position of shifting urban form and density, behavioral and socio-cultural changes and the merging of traditional boundaries in its interrelationship with technology and growth of the modern city. This area of concentration positions the Department of Architecture in the forefront amongst architecture education programs in the United States.

[The beneficiary's] early research initiatives and independent study includes the reviewed paper, "Cellular Urbanism in Megacities" where her research centers on the physical and social implications and resultant hyper mobility in cities of developing countries and megacities due to cell phone usage. Her continuing research and documenting these

consequences as illustrated in her paper, [REDACTED] are wide-ranging and are both essential and unique to the program at [REDACTED]. The implications of this and future research benefits our program and potentially the country as a whole.

* * *

[The beneficiary's] research into the cell phone and its implications in city development, for example, has been featured, published and peer reviewed recently at the [REDACTED] for their [REDACTED] which has been recognized mainly given the phenomenon in growing cities/mega cities of the world and the interrelationship and the effect of technology on urban areas as they respond to the effects of growth, population explosions and also the resultant cultural upheaval.

[REDACTED] comments on the beneficiary's cellular urbanism research stating that it can "potentially" benefit the country as a whole, but there is no documentary evidence showing that the beneficiary's specific research findings have already been implemented in urban development programs throughout the United States or have otherwise influenced the field as a whole. As previously discussed, eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the public or private sector. Any university research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every architectural scholar who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Once again, there is no evidence showing that the beneficiary's published or presented research has been frequently cited by independent scholars or has otherwise significantly impacted the field as a whole.

[REDACTED] states:

[The beneficiary's] project on an [REDACTED] received an award from our [REDACTED] organizes this award competition and ceremony, followed by 3 day long seminars and exhibitions, every year. More than 100 highly skilled architecture professionals from around the country entered the competition, which featured challenging projects from [REDACTED]

The purpose of this competition is to bring these extraordinary projects into the limelight and share with other professionals for the intellectual and technical growth of the profession. These projects establish unique examples from different and individual arenas such as innovative forms, theoretical aspects, sustainability, technology issues, etc. [The beneficiary's] project was awarded and exhibited at [REDACTED] which is one of the largest annual events organized by [REDACTED] and includes professionals from construction, engineering, architecture, environmentalists, community leaders, planners, real-estate developers, material industries and other related fields. It is indeed a significant professional honor for [the beneficiary] to have her unique project selected and awarded from among this large congregation of highly skilled professionals.

According to one of the jurors, [REDACTED] [the beneficiary's] design was a bold, yet sensitive ensemble of cultural and spiritual themes. The jury discussed the unfortunate norm of superficial compositions for complex cultural projects like this, and how her design was anything but conventional. The project's theme, an [REDACTED] where there is strong opposition toward [REDACTED] architecture including a recent ban on building minarets, responded well to a critical topic in this complicated setting and sets itself as an example for similar future projects.

In support of [REDACTED] letter, the petitioner submitted a certificate from the [REDACTED] competition recognizing the beneficiary's [REDACTED] design concept with an "Honor Award." While the award certificate and comments from [REDACTED] may demonstrate the beneficiary's exceptional ability as a designer, there is no documentary evidence showing that the beneficiary's [REDACTED] design is under construction, that her work has influenced the architecture of other [REDACTED] or that her receipt of an award from the [REDACTED] is consistent with a level of achievement demonstrating influence on the field as a whole.

[REDACTED] states:

In celebration of the launch of the initial 2010 publication of [REDACTED] a new platform for architects, people, ideas and projects, we hosted an ideas competition for an [REDACTED] Triggered by the recent ban on the construction of minarets in [REDACTED] we searched for Innovative design proposals where [REDACTED] can gather and practice their religion in an open, Western context.

* * *

Three teams were awarded out of many participants and [the beneficiary], together with her colleague [REDACTED] was awarded the first prize based on their remarkable and unique manifestation of architecture.

[The beneficiary] translated and manifested many theoretical, Islamic dogmas into physical form in an extremely intelligent way. The project, with its innovative green

space creation, directed energy towards a network on landforms, rather than built objects. The project succeeded in creating inviting spaces, somehow representing a peace offering between disparate factions. In lacing the site with an encyclopedic collection of metaphors, we were particularly interested that the [redacted] was somehow pious and secular at the same time. The park avoids an unnecessary discussion about architectural style and minarets by focusing on urban strategies, camouflaging the religious identity of the building with site and surrounding. One could imagine it very well as the next 'Place to be' in [redacted] [The beneficiary's] inimitable design not only placed first in the competition, but it has also been shared and discussed at various conferences including its presentation at a symposium on [redacted]

[redacted] Her project was published there as an issue on [redacted]

The above internet link is for the [redacted] own website, not that of the [redacted]. Once again, while the beneficiary's [redacted] design concept may demonstrate the beneficiary's exceptional ability, there is no documentary evidence showing that her specific design is under construction, that her original work has influenced the design of other [redacted] or that winning the [redacted] design competition is indicative of a significant advancement in the architectural field as a whole.

[redacted] states:

I know of [the beneficiary] and her important work based on my contacts with [redacted] for the [redacted] project. [The beneficiary] is a multifaceted and highly skilled architect, urban designer, and university-level educator who, through her work as an innovative architectural educator at [redacted] enthusiastically accepted our proposal to engage [redacted] architecture students in the mission. She formulated and led her studio team with a group of third-year students to perform research work on finding vernacular materials and easily buildable structures for the new campus. A unique design project followed by extensive research allowed the students to produce superbly innovative structures in only 3-4 weeks with digital drawings and hand-made physical models that were both impressive and exceptional.

I followed [the beneficiary's] group throughout the design phase of the project and attended their final review with 4 other external jurors comprised of professional architects. We were all greatly impressed by how [the beneficiary] was able to successfully channel her distinctive architectural vision, educational guidance, and work ethic. The projects included bamboo to sandbag structures, many of which also incorporate solar technology, and due to the high quality a number of students were actually selected from her studio to continue their research projects on-site in Haiti.

[redacted]

comments on the beneficiary's students' collaborative project with to design housing structures in but there is no documentary evidence showing that the beneficiary's specific work for the project has notably influenced the field as a whole.

a licensed and practicing architect with the firm of

states:

[The beneficiary] has been team teaching the Third Year Design Studio at with me and another Professor since Spring 2010.

This course seeks to educate our students in the areas of design process, building typologies, sustainability, building technology, masterplanning, culturalism and site context. [The beneficiary] contributes greatly to the team with her extensive knowledge of sustainable design strategies, urban design, and the impact of design on diverse cultures. Her sensitivity to issues of urban living and urban density has provided a perspective that our students have benefited greatly from, as they pursue a design career that is global and diverse.

[The beneficiary] has taught courses on the topics of South Asian Art + Architecture and the development of the Mega City. These lectures, unique to her background, have provided not only a source of further study for her students, but also are milestones in her pursuit of research of these critical issues in developing countries.

With regard to the courses taught by the beneficiary at comments do not establish that the benefits of the beneficiary's course instruction would extend beyond the beneficiary's classroom such that they might have a national impact. While like many higher education institutions in the United States, educates students from throughout the world, the beneficiary's teachings as a course instructor would be limited to her immediate students and, therefore, so attenuated at the national level as to be negligible. *See NYSDOT*, 22 I&N Dec. at 217, n.3. In this instance, there is no documentary evidence showing that specific instructional methodologies originated by the beneficiary have been adopted by other reputable universities or have otherwise influenced the field as a whole.

also discusses awards received by the beneficiary and her students stating:

[The beneficiary], as part of her continued research in the areas of mega cities, urban design and sustainable design, has submitted and been awarded for many design competitions, including a 1st Prize for the a 3rd Prize for the 3rd Prize for the and 2nd Prize on a team for the Her experience and

conceptual design capabilities are an asset to her design students. She has advised and led teams of students at [REDACTED] in a number of design competitions where they have been successful in their ability to express ideas of sustainability, urban design, and building design, including [REDACTED]. [The beneficiary] has great talent in visioning, communication and execution for design competitions that have resulted in the achievement of design excellence.

In her second letter dated February 28, 2012, [REDACTED] also comments on the beneficiary's awards stating:

[The beneficiary] has an extensive track record of winning design competitions. To those outside of the design professions, the significance of this may not be apparent. Design innovation – the kind of exploration, probing, and testing that eventually impacts the buildings we live and work in – is the goal of such competitions. [The beneficiary's] design for an [REDACTED] won first prize from the [REDACTED] and also won high acclaim in the U.S. from the American Institute of Architects. Her award winning design directly confronted real issues of representation, [REDACTED] and the role that design professionals can – and must – play in engendering constructive community engagement.

In addition, three times she has been recognized by the [REDACTED] the leading voice in the country for sustainable building, for her design competition entries.

Regarding the awards received by the beneficiary and her students, the AAO notes that recognition for achievement relates to the regulatory categories of evidence for classification as an alien of exceptional ability, a classification that normally requires an alien employment certification. 8 C.F.R. § 204.5(k)(3)(ii). The AAO cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the employment certification requirement in the national interest. As previously discussed, by statute, "exceptional ability" is not, by itself, sufficient cause for a national interest waiver. *Id.* at 218. Regardless, there is no evidence showing that the beneficiary's unbuilt design awards are indicative of significant architectural advancements in her field or a level of achievement consistent with influencing the field as a whole.

In her second letter dated February 23, 2012, [REDACTED] states:

USGBC hosts the annual Natural Talent Design Competition (NDC) to engage young professionals in the conversation of sustainability. The competition begins at a regional level across the country with the champions from each region selected to display their work at USGBC's annual green building conference and expo Greenbuild, North America's largest event of its kind. The conference offers a forum where the competition ideas can be seen, shared, studied, and replicated at symposiums and other venues throughout the country and world.

* * *

[The beneficiary]

capacity as a professor with [REDACTED] she led and advised a team from [REDACTED] that was selected as champions amongst all the architecture students from the [REDACTED] for the [REDACTED]

The subject of this competition was "Small-Green-Affordable" and, in partnership with the Salvation Army's Envi-Renew Initiative, focused on the residential rebuilding effort in New Orleans following Hurricane Katrina. Competitors were divided into students and emerging professional's categories to design homes Houses were designed for elderly families in the Broadmoor neighborhood of New Orleans.

There were 206 entries from a large amount of nationwide applicants. The design finalists' work was exhibited at Greenbuild 2010 and for the first time in the competition's history, the designers saw their projects constructed in the Broadmoor neighborhood. Once the homes were built, they entered a measurement and verification phase and the design team whose home performed the best was awarded the final grand prize in 2011.

While the beneficiary's students' [REDACTED] project was selected in the [REDACTED], there is no documentary evidence showing that their home design was a national finalist or that it performed the best and was awarded the final grand prize in 2011.³ Moreover, there is no evidence showing that that their specific home design was actually constructed in the Broadmoor neighborhood or otherwise constitutes a significant advancement in architecture consistent with influencing the field as a whole.

The director denied the petition finding that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States.

On appeal, the petitioner submits a May 19, 2012 letter from [REDACTED] a Professor in the [REDACTED] with the [REDACTED] states:

³ The two national student finalists in the USGBC 2010 Natural Talent Design Competition were E.A.S.Y. House and Greenboy Design. The "National finalists" announcement for the competition states: "USGBC announces the four national finalists in the 2010 Natural Talent Design Competition. These four winning designs will be constructed in the Broadmoor neighborhood of New Orleans by the Salvation Army's EnviRenew. The Emerging Professional finalists are Little Easy and Ramped Up. The Student finalists are E.A.S.Y. House and Greenboy Design." See <http://openarchitecturenetwork.org/competitions/naturaltalent/2010>, accessed on December 28, 2012, copy incorporated into the record of proceeding.

[The beneficiary] was involved in the transit development for [REDACTED]. She was the sole urban designer along with her supervisor in the planning team in making a holistic future plans [sic] of the [REDACTED] that includes-transit routes, design and placement of platforms in consideration to American disability acts and construction details of the whole system. This being a massive undertaking in the city, it is partly completed on the [REDACTED] and still under construction on other areas. She is the sole designer of [REDACTED] which is to replace the current [REDACTED] in coming years. . . . She was the most expertly trained urban designer in the team working for the scheme for [REDACTED] and attended numerous meetings with [REDACTED] and Department of Transportation (DOT).

[REDACTED] discusses the beneficiary's transit development work in [REDACTED] as an "intern" architect, but there is no documentary evidence showing that her specific work for the city has significantly impacted the field as a whole.

[REDACTED] continues:

As I have seen [the beneficiary's] presence at [REDACTED] department has been instrumental in making the program an [sic] professional accredited program last month. The school passed most of the unresolved points from previous years by National Accreditation Architecture Board (NAAB). This allowed the graduating class to be entitled with a professional degree of Bachelorette in Architecture vs. Bachelorette in Science degree (B.Sc.) which is not recognized as professional degree program. Her core course, mandatory for 3rd year students is a technical studio class which satisfied the pending points in International Building Code (Life Safety, American Disability Act etc.), structural systems, environmental Systems, collaborative and community works, non-western studies. These essential points and course work were introduced and created by [the beneficiary] and henceforth enabled [REDACTED] to regain its professional architecture degree program. The professional accreditation had been conditional for last 6 years and was about to be rebuked in failure of skilled faculty in the field.

According to [REDACTED] architecture degree program received its professional accreditation in Spring 2012. The AAO notes, however, that the program's professional accreditation post-dates the filing of the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. Regardless, the petitioner has failed to demonstrate that the beneficiary's work for [REDACTED] architecture degree program is indicative of her influence on the field as a whole.

[REDACTED] further states:

With request of [REDACTED] students, [the beneficiary] also introduced an independent study course on Sustainable Architecture and Urbanism, which included Leadership in Energy

Efficient Design (LEED) studies and in the end these recent graduate students landed with jobs as LEED coordinates prominent firms including Clark Construction, one of the largest in the nation. That credit solely goes to [the beneficiary] as procurement of job and henceforth adding much to national economy. . . . [The beneficiary's] unique and rare skills in both architecture and urban design with a blend of sustainable practice and non-western is more than enough makes [sic] are [sic] her unique and present her with exceptional value in the field.

[redacted] comments on the beneficiary's "unique and rare skills" in both architecture and urban design. However, as previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

On appeal, counsel repeats the information provided by many of the beneficiary's references. This information has already been addressed by the AAO in its preceding discussion of the letters of support. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an assistant professor of architecture who has influenced the field of architecture as a whole.

Counsel asserts that the director's decision ignored the beneficiary's service on the [redacted]
[redacted]
[redacted]

[redacted] There is no documentary evidence showing that the beneficiary's service on these juries has influenced the field as a whole. While the beneficiary's participation demonstrates her expertise in the field, by statute, "exceptional ability" is not by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218.

Although the beneficiary has worked as an intern architect and assistant professor, the petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The AAO notes that the petitioner need not demonstrate the beneficiary's

notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at 217 n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219 n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”)

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.